

JEFFREY A. KAISER, ESQ., [SBN 160594]  
 SHANNON S. JOHNSON, ESQ., [SBN 239314]  
**LEVIN SIMES KAISER & GORNICK, LLP**  
 44 Montgomery, 36th Floor  
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Attorneys for PLAINTIFFS  
 JO GUNTER HEWITT, ET AL.

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION**

JO GUNTER HEWITT, individually and on )  
 Behalf of the Estate of RONALD A. )  
 HEWITT, decedent; SUSAN SIMPSON; )  
 RHONDA KNIGHT; AND DOES ONE )  
 through TEN, inclusive, )  
 Plaintiff, )  
 vs. )  
 A. W. CHESTERTON COMPANY, et al., )  
 Defendants. )

Case No. C 07-3474 SI

**DECLARATION OF SHANNON S.  
 JOHNSON IN SUPPORT OF MOTION  
 TO REMAND CASE TO CALIFORNIA  
 SUPERIOR COURT; AND FOR  
 PAYMENT OF FEES AND COSTS [28  
 U.S.C. §§1446, 1447(c)]**

Date: September 14, 2007  
 Time: 9:00 a.m.  
 Courtroom.: Courtroom 10, 19<sup>th</sup> Floor  
 San Francisco, CA

The Honorable Susan Illston

I, SHANNON S. JOHNSON, declare:

1. I am an attorney licensed to practice before this Court as well as all the courts of the State of California and am an associate with the law firm of LEVIN SIMES KAISER & GORNICK LLP, attorneys for Plaintiffs herein.

2. Ronald Hewitt, a 69 year old retired police officer and criminal investigator, was diagnosed with mesothelioma on January 24, 2006. He and his wife Jo filed an asbestos personal injury and loss of consortium lawsuit in San Francisco County Superior Court on February 27, 2006. Mr. Hewitt's principal exposures to asbestos occurred while his ships, the USS Epperson and the USS

1 Ashtabula, were overhauled at TODD's shipyard in San Pedro, CA in the late 1950s, and the late  
2 1960s, respectively.

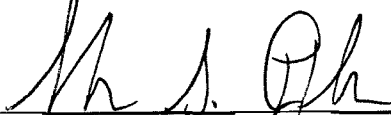
3 3. Attached hereto as Exhibit "A" is a true and correct copy of Plaintiffs' Second  
4 Amended Complaint.

5 4. My time is billed at the hourly rate of \$200.00 per hour and the partner who worked on  
6 this as well, Jeff Kaiser, is billed at a standard rate of \$500.00 per hour.

7 5. I spent 8 hours preparing the motion for remand for a total fee of \$1,600.00. It is  
8 believed that Jeff Kaiser will spend at least two more hours preparing for and attending the hearing.  
9 The total fee for preparing and attending the hearing on this motion will be about \$2,600.00

10 I declare under penalty of perjury that the foregoing is true and correct.

11 Executed this 2<sup>nd</sup> day of August, 2007, in San Francisco, California.

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14 Shannon S. Johnson  
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# **EXHIBIT A**

SECOND AMENDED

# SUMMONS

## (CITACION JUDICIAL)

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**ALLIS CHALMERS CORPORATION PRODUCT LIABILITY TRUST;  
SEE ATTACHMENT FOR ADDITIONAL DEFENDANTS**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**JO GUNTER HEWITT, individually and on Behalf of the  
Estate of RONALD HEWITT, decedent; SUSAN SIMPSON;  
RHONDA KNIGHT AND DOES ONE through TEN, inclusive

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA  
400 MCALLISTER STREET

SAN FRANCISCO, CA 94102

CASE NUMBER:

(Número del Caso): CGC 06 449838.

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

JEFFREY A. KAISER (SBN 160594)  
LEVIN SIMES KAISER & GORNICK, LLP  
44 MONTGOMERY STREET, 36TH FLOOR  
SAN FRANCISCO, CA 94104

DATE:

(Fecha) MAY 23 2007

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify):

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):

4. ☐ by personal delivery on (date):

(SEAL)

Attachment to Summons

**JO GUNTER HEWITT, individually and on Behalf of  
the Estate of RONALD HEWITT, decedent; SUSAN  
SIMPSON; RHONDA KNIGHT AND DOES ONE  
through TEN, inclusive,**

**PLAINTIFFS,**

**VS.**

**ALLIS CHALMERS CORPORATION PRODUCT  
LIABILITY TRUST;  
PLANT INSULATION COMPANY;  
SULZER PUMPS (US) INC., INDIVIDUALLY AND AS  
SII TO BINGHAM INTERNATIONAL, INC.;  
THORPE INSULATION COMPANY;  
UNIROYAL, INC.;  
TODD SHIPYARDS CORPORATION  
AND THE ELEVENTH DOE THROUGH THREE  
HUNDREDTH DOE, INCLUSIVE,**

**DEFENDANTS.**

No. CGC 06 449838

JEFFREY A. KAISER, ESQ. [SBN 160594]  
SHANNON S. PATEL, ESQ. [SBN 239314]  
LEVIN SIMES KAISER & GORNICK, LLP  
44 Montgomery Street, 36th Floor  
San Francisco, California 94104  
Telephone (415) 646-7160  
Facsimile (415) 981-1270

Attorneys for Plaintiffs  
JO GUNTER HEWITT, et al.

ELECTRONICALLY

**FILED**

Superior Court of California,  
County of San Francisco

**MAY 18 2007**

GORDON PARK-LI, Clerk

BY: JUDITH NUNEZ

Deputy Clerk

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
(UNLIMITED JURISDICTION)

JO GUNTER HEWITT, et al,

No. CGC 06 449838

Plaintiffs,

PRELIMINARY FACT  
SHEET NEW FILING/  
ASBESTOS LITIGATION  
(See General Order No. 129)  
In Re Complex Asbestos  
Litigation

vs.

ALLIS CHALMERS CORPORATION  
PRODUCT LIABILITY TRUST, et al.,

Defendants.

**NOTICE**

**TO NEW DEFENDANTS SERVED IN COMPLEX ASBESTOS LITIGATION IN THE  
SUPERIOR COURT IN AND FOR THE STATE OF CALIFORNIA,  
CITY AND COUNTY OF SAN FRANCISCO:**

You have been served with process in an action which has been designated by the Court as complex litigation pursuant to Standard 19 of the Standards of Judicial Administration. This litigation bears the caption "In Re: Complex Litigation," [San Francisco Superior Court No. 828684].

This litigation is governed by various general orders, some of which affect the judicial management and/or discovery obligations, including the responsibility to answer interrogatories deemed propounded in the case. You may contact the Court or Designated Defense Counsel, Berry & Berry, Station D, Post Office Box 16070 (2930 Lakeshore Ave.), Oakland, California 94610; Telephone: (510) 250-0200; FAX: (510) 835-5117 for further information and/or copies of these orders, at your expense.

- 1 State the complete name and address of each person whose claimed exposure to  
2 asbestos is the basis of this lawsuit ("exposed person");

3 **RONALD HEWITT, DECEDENT**

- 4  
5 2. Does plaintiff anticipate filing a motion for preferential trial date within the next  
6 four months? ☐ Yes ☒ No

- 7 3. Date of birth of each exposed person in item one and, if applicable, date of death:

8 Date of Birth: September 4, 1936 Date of Death: December 22, 2006

9 Social Security Number of each exposed person: 458-54-2573

- 10 4. Specify the nature or type of asbestos-related disease alleged by each exposed  
11 person:

12 ☐ Asbestosis ☒ Mesothelioma  
13 ☐ Pleural Thickening/Plaques ☐ Other Cancer: Specify: \_\_\_\_\_  
14 Lung Cancer Other Than Mesothelioma Other: Specify: \_\_\_\_\_

- 15 5. For purposes of identifying the nature of exposure allegations involved in this  
16 action, please check one or more:

17 ☐ Shipyard ☐ Construction ☐ Friction-Automotive  
18 ☐ Premises ☐ Aerospace ☒ Military  
19 ☐ Other: Specify all that apply: Self-employed landscaper

20 If applicable, indicate which exposure allegations apply to which exposed person.

- 21 6. Identify each location alleged to be a source of an asbestos exposure, and to the  
22 extent known, provide the beginning and ending year(s) of each such exposure. Also specify each  
23 exposed person's employer and job title or job description during each period of exposure. (For  
24 example: "San Francisco Naval Shipyard - Pipefitter - 1939-1948"). Examples of locations of  
25 exposure might be a specific shipyard, a specific railroad maintenance yard, or perhaps more  
26 generalized descriptions such as "merchant Marine" or "construction." If an exposed person  
27 claims exposure during only a portion of a year, the answer should indicate that year as the  
28

beginning and ending year (e.g., 1947-1947).

Employer & Dates	Jobsite(s)	Job Duties
<b>US Navy 1955-1968</b>	USS Epperson DD-179 USS Shields DD-596 USS Perkins DD-877 NAS-Kingsville, TX USS Ajax AR-6 USS Ashtabula AD-51 Pearl Harbor, HI San Diego, CA Many U.S. Navy ships, Japan San Francisco, CA Long Beach, CA	Machinist mate on ships; ground support for fighter jets at Kingsville, TX
<b>Fleet Reserve 1968-1981</b>	San Diego, CA; Long Beach, CA	Unknown at this time
<b>Hurst, Texas Police Dept. 1968-1980</b>	Hurst, TX	Patrol officer
<b>Freeport Gold Mine 1980-1983</b>	Elko, NV	Smelters assistant
<b>Haltom City, Texas Police Dept. 1983-1995</b>	Haltom City, TX	Criminal investigator

7. For each exposed person who:

- a. worked in the United States or for a U. S. agency outside the territorial United States, attach to the copy of this fact sheet provided to Designated Defense Counsel a fully executed Social Security Earnings authorization (Exhibit N-4 to General Order No. 129);
- b. may have had a Social Security disability award or is no longer employed and whose last employment was not with a United States government agency, attach to the copy of this fact sheet provided to Designated Defense counsel a fully executed Social Security Disability authorization (Exhibit N-5 to General Order No. 129);
- c. served at any time in the United States military, attach to the copy of this fact sheet provided to the Designated Defense counsel two fully executed originals of the stipulation (Exhibit



1 N-3 to General Order No. 129);

2 d. was employed by the United States government in a civilian capacity, attach to the  
3 copy of this fact sheet provided to Designated Defense counsel two fully executed originals of the  
4 stipulation (Exhibit N-3 to General Order No. 129).


5 8. If there is a wrongful death claim, attach to the copy of this fact sheet provided to  
6 Designated Defense Counsel a copy of the death certificate, if available. If an autopsy report was  
7 done, also attach a copy of it to the copy of this fact sheet provided to Designated Defense  
8 Counsel.

9 9. State the date of the filing of the initial complaint in this matter: February 27, 2006.

10  
11 DATED: May 18, 2007

LEVIN SIMES KAISER & GORNICK, LLP

12  
13 BY

  
SHIANNON S. PATEL  
Attorney for Plaintiffs



JEFFREY A. KAISER [SBN 160594]  
 SHANNON S. PATEL [SBN 239314]  
**LEVIN SIMES KAISER & GORNICK, LLP**  
 44 Montgomery Street, 36<sup>th</sup> Floor  
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 Facsimile: (415) 981-1270

Attorneys for Plaintiffs

JO GUNTER HEWITT, et al.

ELECTRONICALLY  
**FILED**  
 Superior Court of California,  
 County of San Francisco

**MAY 18 2007**  
 GORDON PARK-LI, Clerk  
 BY: JUDITH NUNEZ  
 Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO  
 (UNLIMITED JURISDICTION)

JO GUNTER HEWITT, individually and on Behalf of  
 the Estate of RONALD HEWITT, decedent; SUSAN  
 SIMPSON; RHONDA KNIGHT AND DOES ONE  
 through TEN, inclusive,

PLAINTIFFS,

VS.

ALLIS CHALMERS CORPORATION PRODUCT  
 LIABILITY TRUST;  
 PLANT INSULATION COMPANY;  
 SULZER PUMPS (US) INC., INDIVIDUALLY AND AS  
 SII TO BINGHAM INTERNATIONAL, INC.;  
 THORPE INSULATION COMPANY;  
 UNIROYAL, INC.;  
 TODD SHIPYARDS CORPORATION  
 AND THE ELEVENTH DOE THROUGH THREE  
 HUNDREDTH DOE, INCLUSIVE,

DEFENDANTS.

No. CGC 06 449838

SECOND AMENDED  
 COMPLAINT FOR  
 DAMAGES

(Wrongful Death)  
 (Asbestos)

Negligence  
 Strict Liability  
 Survival Action  
 And  
 Loss of Consortium

GENERAL ALLEGATIONS

1. The true names and capacities, whether individual, corporate, associate, governmental or otherwise, of defendants ELEVENTH DOE through THREE HUNDREDTH DOE, inclusive, are

1 known to plaintiffs at this time, who therefore sue said defendants by such fictitious names. When the  
 2 true names and capacities of said defendants have been ascertained, plaintiffs will amend this complaint  
 3 accordingly. Plaintiffs are informed and believe, and thereon allege, that each defendant designated  
 4 herein as a DOE is responsible, negligently or in some other actionable manner, for the events and  
 5 happenings hereinafter referred to, and caused injuries and damages proximately thereby to the  
 6 decedent, as hereinafter alleged.

7 2. At all times herein mentioned, each of the defendants, except as otherwise alleged, was  
 8 the agent, servant, employee and/or joint venturer of her co-defendants, and each of them, and at all said  
 9 times, each defendant was acting in the full course and scope of said agency, service, employment  
 10 and/or joint venture. Certain defendants agreed and conspired among themselves and with certain other  
 11 individuals and/or entities, to act, or not to act, in such a manner that resulted in injury to the decedent;  
 12 and such defendants, as co-conspirators, are liable for the acts, or failures to act, of other conspiring  
 13 defendants. Plaintiffs are informed and believe, and allege, that at all times herein mentioned  
 14 defendants ELEVENTH DOE through THREE HUNDREDTH DOE, inclusive, were and are  
 15 authorized to do business in the State of California, and that said defendants have regularly conducted  
 16 business in the County of San Francisco, State of California.

17 3. Plaintiffs are informed and believe, and thereon allege that at all times herein mentioned,  
 18 each defendant named herein and ELEVENTH DOE through THREE HUNDREDTH DOE, inclusive,  
 19 were and are corporations organized and existing under and by virtue of the laws of the State of  
 20 California, or the laws of some other state or foreign jurisdiction, and that said defendants, and each of  
 21 them, were and are authorized to do and are doing business in the State of California, and that said  
 22 defendants have regularly conducted business in the County of San Francisco, State of California.

### 23 FIRST CAUSE OF ACTION-NEGLIGENCE

#### 24 (Wrongful Death)

25 *PLAINTIFFS JO GUNTER HEWITT, SUSAN SIMPSON, RHONDA KNIGHT and DOES ONE*  
 26 *through TEN, Inclusive, COMPLAIN OF DEFENDANTS, AND EACH OF THEM, AND FOR A*  
 27 *CAUSE OF ACTION FOR NEGLIGENCE (WRONGFUL DEATH) ALLEGE:*  
 28



1           4.     The true names and capacities, whether individual, corporate, associate, governmental or  
2 otherwise, of defendants ELEVENTH DOE through THREE HUNDREDTH DOE, inclusive, are  
3 unknown to plaintiffs at this time, who therefore sues said defendants by such fictitious names. When  
4 the true names and capacities of said defendants have been ascertained, plaintiffs will amend this  
5 Complaint accordingly. Plaintiffs are informed and believe and thereon allege that each defendant  
6 designated herein as a DOE is responsible, negligently or in some other actionable manner, for the  
7 events and happenings hereinafter referred to, and caused injuries and damages proximately thereby to  
8 the plaintiffs, as hereinafter alleged.

10           5.     At all times herein mentioned, each of the defendants was the agent, servant, employee  
11 and/or joint venturer of his co-defendants, and each of them, and at all said times, each defendant was  
12 acting in the full course and scope of said agency, service, employment and/or joint venture.

14           6.     Plaintiffs are informed and believe, and thereon alleges, that at all times herein  
15 mentioned, defendants **ALLIS CHALMERS CORPORATION PRODUCT LIABILITY TRUST;**  
16 **PLANT INSULATION COMPANY; SULZER PUMPS (US) INC., INDIVIDUALLY AND AS SII**  
17 **TO BINGHAM INTERNATIONAL, INC.; THORPE INSULATION COMPANY;**  
18 **UNIROYAL, INC.; TODD SHIPYARDS CORPORATION AND THE ELEVENTH DOE**  
19 **THROUGH THREE HUNDREDTH DOE**, inclusive, are corporations organized and existing under  
20 and by virtue of the laws of the State of California, or the laws of some state or foreign jurisdiction, and  
21 that said defendants were and are authorized to do and are doing business in the State of California, and  
22 that said defendants have regularly conducted business in the City and County of San Francisco, State of  
23 California. The defendants identified in this paragraph are hereinafter referred to as "**ASBESTOS**  
24 **DEFENDANTS**"

26           7.     At all times herein mentioned, each of the **ASBESTOS DEFENDANTS** was the  
27 successor, successor in business, successor in product line or a portion thereof, parent, subsidiary,  
28

1 wholly or partially owned by, or the whole or partial owner of or member in an entity researching,  
 2 studying, manufacturers, fabricating, designing, labeling, assembling, distributing, leasing, buying  
 3 offering for sale, selling, inspecting, servicing, installing, contracting for installation, repairing,  
 4 modifying, disturbing, handling, marketing, warranting, rebranding, manufacturing for others,  
 5 packaging and advertising a certain substance the generic name for which is asbestos, and other  
 6 products containing said substance. Said entities shall hereinafter collectively be called "alternate  
 7 entities". Each of the herein named **ASBESTOS DEFENDANTS** are liable for the tortuous conduct of  
 8 each successor, successor in business, successor in product line or a portion thereof, assign,  
 9 predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary,  
 10 alter-ego, whole or partial owner, or wholly or partially owned entity, or entity that it as a member of, or  
 11 funded, that researched, studied, manufactured, fabricated, designed, labeled, assembled, distributed,  
 12 leased, bought, offered for sale, sold, inspected, serviced, installed, contracted for installation, repaired,  
 13 marketed, warranted, rebranded, manufactured for others and advertised a certain substance, the generic  
 14 name of which is asbestos, and other products containing said substance. The following **ASBESTOS**  
 15 **DEFENDANTS**, and each of them, are liable for the acts of each and every "alternate entity", and each  
 16 of them, in that there has been a virtual destruction of plaintiffs remedy against each such "alternate  
 17 entity"; **ASBESTOS DEFENDANTS**, and each of them, have acquired the assets, product line, or  
 18 apportion thereof, of each such "alternate entity"; **ASBESTOS DEFENDANTS**, and each of them,  
 19 caused the destruction of plaintiffs remedy against each such "alternate entity"; each such **ASBESTOS**  
 20 **DEFENDANTS** has the ability to assume the risk-spreading role of each such "alternate entity"; and  
 21 that each such **ASBESTOS DEFENDANT** enjoys the goodwill originally attached to each such  
 22 "alternate entity".  
 23  
 24  
 25  
 26

DEFENDANTALTERNATE ENTITY

SULZER PUMPS (US) INC.

BINGHAM INTERNATIONAL, INC.

1           8.       The Federal Courts lack jurisdiction over this action and removal is therefore improper.  
2       There is incomplete diversity of citizenship due to the presence of a California **ASBESTOS**  
3       **DEFENDANT**. Every claim arising under the Constitution, treaties, or laws of the United States is  
4       expressly disclaimed. This includes any claim arising from an act on a Federal Enclave as defined by  
5       Article I, section. 8, clause 17 of the United States Constitution. This also includes any claim arising  
6       from any act or omission of the United States, any agency thereof, any officer of the United States, or a  
7       claim against any other person or entity that is based on an act that was performed under specific  
8       direction of the United States, any agency thereof or any Officer of the United States. No claim of  
9       admiralty or maritime law is raised. Plaintiffs sue no foreign state or agency. Venue is proper in San  
10       Francisco County, Superior Court of California.  
11

12           9.       At all times herein mentioned, the **ASBESTOS DEFENDANTS** and each of them were  
13       engaged in the business of manufacturing, installing, contracting for installation, scrapping, fabricating,  
14       designing, assembling, distributing, leasing, buying, selling, modifying, disturbing, handling, inspecting,  
15       servicing, repairing, marketing, warranting and advertising a certain substance, the generic name of  
16       which is asbestos, and/or other products containing said substance, or are engaged in the business of  
17       manufacturing, fabricating, designing, assembling, distributing, selling, and marketing of safety  
18       equipment, including respiratory protective devices which were intended to block the entry of asbestos  
19       fibers into the bodies of workers who were exposed to asbestos in the workplace and other locations.  
20  
21

22           10.      At all times herein mentioned, the **ASBESTOS DEFENDANTS**, and each of them were  
23       aware that the original gaskets and packing supplied with the steam pumps would need to be removed  
24       and replaced with new gaskets and packing during ordinary operation and maintenance of the steam  
25       pumps. Heat and pressure generated by operation of the steam pumps would affect the original and  
26       replacement gaskets and packing – e.g., making them brittle, friable and not reusable, making  
27       replacement necessary and dangerous. It was foreseeable that the process of removing old gaskets and  
28

1 packing, and replacing them with the new materials during ordinary maintenance operations would  
 2 disturb the asbestos materials, releasing asbestos into the air.

3 11. At all times herein mentioned, the **ASBESTOS DEFENDANTS**, and each of them,  
 4 singularly and jointly, negligently and carelessly researched, tested or failed to test, warned or failed to  
 5 warn, manufactured and/or caused to be manufactured, designed, developed, distributed, labeled,  
 6 advertised, marketed, warranted, inspected, repaired, fabricated, assembled, installed, modified,  
 7 handled, disturbed, serviced, and sold a certain substance, the generic name of which is asbestos, and/or  
 8 other products containing said substance, and said substance was capable of causing and did, in fact,  
 9 proximately cause personal injuries to users, consumers, workers and others, while being used in a  
 10 manner reasonably foreseeable, thereby rendering said substances unsafe and dangerous for use by the  
 11 consumers, users, bystanders or workers exposed thereto;  
 12

13 12. Plaintiffs' decedent was exposed to asbestos and asbestos products referred to in  
 14 paragraph 10, in a manner that was reasonably foreseeable.  
 15

16 13. As a direct and proximate result of the conduct of the **ASBESTOS DEFENDANTS**, and  
 17 each of them, as aforesaid, the exposure to asbestos caused plaintiffs' decedent to contract mesothelioma  
 18 (cancer) from which he died on December 22, 2006.  
 19

20 14. Plaintiffs did not learn of the causal relationship between decedent's exposure to asbestos  
 21 and her death until less than one year before the date on which this complaint was filed.

22 15. Plaintiffs are the heirs of RONALD HEWITT, deceased, herein referred to as "decedent",  
 23 as follows:

24	JO GUNTER HEWITT	Spouse
25	SUSAN SIMPSON	Daughter
26	RHONDA KNIGHT	Daughter
27		
28		



1           16. As a result of the conduct of **ASBESTOS DEFENDANTS**, and each of them, decedent's  
2 heirs have sustained pecuniary loss resulting from the loss of love, comfort, society, attention, services  
3 and support of decedent in a sum in invoking the unlimited jurisdictional limits of the Court.

4           17. As a further result of the conduct of **ASBESTOS DEFENDANTS**, and each of them,  
5 and the death of decedent, plaintiffs herein have incurred funeral and burial expenses in an amount to be  
6 subsequently ascertained.

7           18. Plaintiffs have lost pre-judgment interest pursuant to Civil Code Section 3288, the exact  
8 amount of which plaintiff prays leave to insert herein when finally ascertained.

9           19. As a further direct and proximate result of the said conduct of **ASBESTOS**  
10 **DEFENDANTS**, and each of them, plaintiff has incurred, and will incur, loss of income, wages,  
11 pension, profits and commissions, a diminished earning potential, and other pecuniary losses, the full  
12 nature and extent of which are not yet known to plaintiff; and leave is requested to amend this  
13 Complaint to conform to proof at the time of trial.

14           20. Defendant **TODD SHIPYARDS CORPORATION** negligently failed to warn decedent  
15 and others similarly situated that the asbestos containing products and materials in use by its workers,  
16 hired contractors and sub-contractors, from which decedent Ronald Hewitt suffered harmful exposures  
17 to airborne asbestos fibers, were in fact harmful and deadly and could lead asbestos-related illnesses  
18 including but not limited to mesothelioma. **TODD SHIPYARDS CORPORATION** employees and its  
19 subcontractors negligently exposed decedent Ronald Hewitt to airborne asbestos fibers through working  
20 with asbestos-containing materials in his presence at **TODD SHIPYARDS CORPORATION** in San  
21 Pedro, CA. **TODD SHIPYARDS CORPORATION** owned this facility, controlled the facility and its  
22 employees and the contractors **TODD SHIPYARDS CORPORATION** hired directly exposed  
23 decedent to harmful asbestos fibers and failed to warn decedent of the hazardous condition it created  
24 and **TODD SHIPYARDS CORPORATION** knew or reasonably should have known of the hazards of

1 asbestos. Pursuant to *Westbrook v. Asbestos Defendants*, 2001 U.S. Dist. Lexis 11575, **TODD**  
2 **SHIPYARDS CORPORATION** failed to warn decedent that the asbestos-containing products its  
3 employees and subcontractors were using were harmful to decedent and others similarly situated. As  
4 such, **TODD SHIPYARDS CORPORATION** negligently retained control of the contractors that  
5 exposed decedent to this harmful condition. **TODD SHIPYARDS CORPORATION** reasonably  
6 should have warned decedent of the hazards created by **TODD SHIPYARDS CORPORATION**  
7 workers and **TODD SHIPYARDS CORPORATION'S** agents. This duty to warn decedent about the  
8 hazards created directly by **TODD SHIPYARDS CORPORATION** and its agents is independent of  
9 any potential role the Navy might have played in specifying the use of asbestos containing materials on  
10 Navy Ships.  
11

12 **TODD SHIPYARDS CORPORATION** should have recognized that the work of its employees  
13 and contractors would create during the progress of the work, dangerous, hazardous, and unsafe  
14 conditions which could or would harm decedent and others unless special precautions were taken.  
15

16 **TODD SHIPYARDS CORPORATION** knew or had reason to know, that the contractors it  
17 had selected and hired to install, remove, abate or otherwise handle asbestos-containing materials were  
18 unfit or unqualified to do so  
19

20 **TODD SHIPYARDS CORPORATION** failed to use reasonable care to discover whether the  
21 contractors it selected and hired to install, remove, abate or otherwise handle asbestos-containing  
22 materials were competent or qualified to do so.

23 **WHEREFORE**, plaintiffs pray judgment against **ASBESTOS DEFENDANTS**, and each of  
24 them, as hereafter set forth.

25 **SECOND CAUSE OF ACTION - STRICT LIABILITY**  
26

27 **AS AND FOR A SECOND, SEPARATE, FURTHER AND DISTINCT CAUSE OF ACTION**  
28 **FOR STRICT LIABILITY, PLAINTIFFS JO GUNTER HEWITT individually and as Personal**

1 *Representative to the Estate of RONALD HEWITT, decedent; SUSAN SIMPSON, RHONDA KNIGHT*  
2 *AND DOES ONE THROUGH TEN, INCLUSIVE, COMPLAIN OF THE ASBESTOS DEFENDANTS AND*  
3 *EACH OF THEM, AND ALLEGE AS FOLLOWS:*

4 20. Plaintiffs reallege and incorporate herein by reference each of the proceeding paragraphs  
5 of this Complaint.

6 21. **ASBESTOS DEFENDANTS** and each of them, researched, manufactured, tested or  
7 failed to test, warned or failed to warn, designed, labeled, distributed, advertised, marketed, warranted,  
8 modified, handled, disturbed, inspected, repaired, offered for sale and sold a certain substance, the  
9 generic name of which is asbestos and other products containing said substance, which substance is  
10 defective, in that same was capable of causing and did, in fact, cause personal injuries and/or death  
11 including mesothelioma and other lung damage and cancer, to the users and consumers thereof while  
12 being used in a reasonably foreseeable manner, thereby rendering the same unsafe and dangerous for use  
13 by consumers, users, bystanders and workers exposed thereto; said **ASBESTOS DEFENDANTS**, and  
14 each of them, further failed to adequately warn of the risks to which decedent and others similarly  
15 situated were exposed.

16 22. At all times herein mentioned, the **ASBESTOS DEFENDANTS**, and each of them were  
17 aware that the original gaskets and packing supplied with the steam pumps would need to be removed  
18 and replaced with new gaskets and packing during ordinary operation and maintenance of the steam  
19 pumps. Heat and pressure generated by operation of the steam pumps would affect the original and  
20 replacement gaskets and packing – e.g., making them brittle, friable and not reusable, making  
21 replacement necessary and dangerous. It was foreseeable that the process of removing old gaskets and  
22 packing, and replacing them with the new materials during ordinary maintenance operations would  
23 disturb the asbestos materials, releasing asbestos into the air.

24 23. As a direct and proximate result thereof, decedent suffered the injuries from which he  
25 subsequently died and plaintiffs have suffered the injuries and damages previously alleged.

26 WHEREFORE, plaintiffs pray judgment against **ASBESTOS DEFENDANTS**, and each of  
27 them, as hereafter set forth.  
28

**THIRD CAUSE OF ACTION - SURVIVAL ACTION**

*AS AND FOR A THIRD, SEPARATE, FURTHER AND DISTINCT CAUSE OF ACTION (SURVIVAL ACTION), PLAINTIFF JO GUNTER HEWITT as Personal Representative to the Estate of RONALD HEWITT, decedent;, COMPLAIN OF ASBESTOS DEFENDANTS, AND EACH OF THEM, AND FOR A CAUSE OF ACTION ALLEGES:*

24. Plaintiffs incorporate by reference herein each and every paragraph of the First and Second Causes of Action of this Complaint, and makes them a part of this, the Third Cause of Action, as though fully set forth herein.

25. Prior to his death, decedent RONALD HEWITT had a cause of action against **ASBESTOS DEFENDANTS** herein for personal injuries arising from his exposure to asbestos. On December 22, 2006, after the foregoing cause of action arose in his favor, RONALD HEWITT, who would have been the plaintiff in this action if he had lived, died.

26. As a proximate result of the conduct of **ASBESTOS DEFENDANTS**, and each of them, decedent was required to, and did, employ physicians and surgeons to examine, treat and care for him and did incur medical and incidental expenses in a sum to be subsequently determined.

27. As a further, direct and proximate result of the conduct of **ASBESTOS DEFENDANTS**, and each of them, decedent was prevented from attending to his usual occupation for a period of time and thereby incurred damages for loss of earnings in a sum to be subsequently determined.

28. In researching, testing, manufacturing, distributing, labeling, and marketing said products, **ASBESTOS DEFENDANTS** in this cause of action named, and each of them, did so with conscious disregard for the safety of the users of said products, in that **ASBESTOS DEFENDANTS** had specific prior knowledge that there was a high risk of injury or death resulting from exposure to asbestos or asbestos products, including but not limited to mesothelioma. Said knowledge was obtained, in part, from scientific studies, government data, and medical data to which **ASBESTOS**

1                                    **THIRD CAUSE OF ACTION - SURVIVAL ACTION**

2                    *AS AND FOR A THIRD, SEPARATE, FURTHER AND DISTINCT CAUSE OF ACTION*  
3                    *(SURVIVAL ACTION), PLAINTIFF JO GUNTER HEWITT as Personal Representative to the Estate of*  
4                    *RONALD HEWITT, decedent;, COMPLAIN OF ASBESTOS DEFENDANTS, AND EACH OF THEM,*  
5                    *AND FOR A CAUSE OF ACTION ALLEGES:*  
6

7                    24.     Plaintiffs incorporate by reference herein each and every paragraph of the First and  
8                    Second Causes of Action of this Complaint, and makes them a part of this, the Third Cause of Action,  
9                    as though fully set forth herein.

10                   25.     Prior to his death, decedent RONALD HEWITT had a cause of action against  
11                   **ASBESTOS DEFENDANTS** herein for personal injuries arising from his exposure to asbestos. On  
12                   December 22, 2006, after the foregoing cause of action arose in his favor, RONALD HEWITT, who  
13                   would have been the plaintiff in this action if he had lived, died.

14                   26.     As a proximate result of the conduct of **ASBESTOS DEFENDANTS**, and each of them,  
15                   decedent was required to, and did, employ physicians and surgeons to examine, treat and care for him  
16                   and did incur medical and incidental expenses in a sum to be subsequently determined.

17                   27.     As a further, direct and proximate result of the conduct of **ASBESTOS DEFENDANTS**,  
18                   and each of them, decedent was prevented from attending to his usual occupation for a period of time  
19                   and thereby incurred damages for loss of earnings in a sum to be subsequently determined.

20                   28.     In researching, testing, manufacturing, distributing, labeling, and marketing said  
21                   products, **ASBESTOS DEFENDANTS** in this cause of action named, and each of them, did so with  
22                   conscious disregard for the safety of the users of said products, in that **ASBESTOS DEFENDANTS**  
23                   had specific prior knowledge that there was a high risk of injury or death resulting from exposure to  
24                   asbestos or asbestos products, including but not limited to mesothelioma. Said knowledge was  
25                   obtained, in part, from scientific studies, government data, and medical data to which **ASBESTOS**  
26                     
27                     
28

1 **DEFENDANTS** had access, as well as scientific studies performed by, at the request of, or with the  
2 assistance of, said **ASBESTOS DEFENDANTS**, and which knowledge was obtained by said  
3 **ASBESTOS DEFENDANTS** on or before 1933, and thereafter.

4  
5 29. On or before 1933, and thereafter, said **ASBESTOS DEFENDANTS** were aware that  
6 users of asbestos and asbestos products, as well as members of the general public who would be  
7 exposed to asbestos and asbestos products, had no knowledge or information indicating that asbestos  
8 could cause injury, and said **ASBESTOS DEFENDANTS** knew that the users of asbestos and asbestos  
9 products, as well as members of the general public who were exposed to asbestos and asbestos products,  
10 would assume, and in fact did assume, that exposure to asbestos and asbestos products was safe, when  
11 in fact said exposure was extremely hazardous to human life.

12  
13 30. With said knowledge, said **ASBESTOS DEFENDANTS** opted to manufacture and  
14 distribute said asbestos and asbestos products without attempting to protect users from or warn users of,  
15 the high risk of injury or death resulting from exposure to asbestos and asbestos products. Rather than  
16 attempting to protect users and workers from, or warn workers and users of, the high risk of injury or  
17 death resulting from exposure to asbestos and asbestos products, **ASBESTOS DEFENDANTS**  
18 intentionally failed to reveal their knowledge of said risk, fraudulently, consciously and actively  
19 concealed and suppressed said knowledge from members of the general public that asbestos and  
20 asbestos products were unsafe for all reasonably foreseeable use, with the knowledge of the falsity of  
21 said implied representations.

22  
23 31. The above referenced conduct of said **ASBESTOS DEFENDANTS** was motivated by  
24 the financial interest of said **ASBESTOS DEFENDANTS** in the continuing, uninterrupted distribution  
25 and marketing of asbestos and asbestos products. In pursuance of said financial motivation, said  
26 **ASBESTOS DEFENDANTS** consciously disregarded the safety of the users of, and persons exposed  
27 to, asbestos and asbestos products, and were in fact, consciously willing to permit asbestos and asbestos  
28



1 products to cause injury to workers and users thereof, and persons exposed thereto, including plaintiff.

2  
3 32. As the above referenced conduct of said **ASBESTOS DEFENDANTS** was and is vile,  
4 base, willful, malicious, fraudulent, oppressive, outrageous, and in conscious disregard and indifference  
5 to the safety and health of workers exposed to asbestos and asbestos products, including plaintiffs'  
6 decedent, plaintiff, for the sake of example, and by way of punishing said **ASBESTOS**  
7 **DEFENDANTS**, seeks punitive damages according to proof.

8 **FOURTH CAUSE OF ACTION - LOSS OF CONSORTIUM**

9 *AS AND FOR A FURTHER, FOURTH, SEPARATE AND DISTINCT CAUSE OF ACTION FOR*  
10 *LOSS OF CONSORTIUM, PLAINTIFF JO GUNTER HEWITT, COMPLAINS OF ASBESTOS*  
11 *DEFENDANTS, AND EACH OF THEM, AND ALLEGES AS FOLLOWS:*

12 33. Plaintiff JO GUNTER HEWITT realleges and incorporates herein by reference each of  
13 the proceeding paragraphs of this Complaint.

14 34. Plaintiff JO GUNTER HEWITT was at all relevant times the lawfully wedded spouse of  
15 decedent RONALD HEWITT

16 35. As a direct and proximate result of the conduct of **ASBESTOS DEFENDANTS**, and  
17 each of them, and of the severe injuries caused thereby to decedent prior to his death, as hereinabove  
18 alleged, plaintiff JO GUNTER HEWITT suffered loss of consortium, including, but not by way of  
19 limitation, loss of services, marital relations, society, comfort, companionship, love and affection of his  
20 said spouse, and has suffered severe mental and emotional distress and general nervousness as a result  
21 thereof.

22 36. Plaintiff JO GUNTER HEWITT, as a result of the foregoing described injuries to her  
23 said spouse, has been generally damaged in a sum invoking the unlimited jurisdiction of the Court.

24 WHEREFORE, plaintiffs pray judgment against **ASBESTOS DEFENDANTS** and each of  
25 them as follows:

- 26 1. For general damages according to proof;  
27 2. For burial expenses according to proof;  
28 3. For medical and related expenses according to proof;

4. For loss of income according to proof;
5. For punitive damages according to proof;
6. For loss of care, comfort and society.
7. For plaintiffs' costs of suit herein; and,
8. For such other and further relief as this Court deems just and proper, including costs as provided in CCP § 998, CCP § 1032 and related provisions of law.

DATED: May 18, 2007

LEVIN SIMES KAISER & GORNICK, LLP



SHANNON S. PATEL  
Attorney for Plaintiffs